

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

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**OCT 23 1998**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
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**BRISTOL BAY CELLULAR PARTNERSHIP** )  
 )  
Petition for Waiver of the )  
Federal Communications Commission's Rules )  
Concerning Implementation of Long- )  
Term Number Portability )  
 )

File No. \_\_\_\_\_

CC Docket 95-116

To: Common Carrier Bureau

**PETITION FOR WAIVER**

Bristol Bay Cellular Partnership ("Bristol Bay" or "Petitioner"), by its attorneys, respectfully requests a waiver of Section 52.31(b) of the Federal Communications Commission's rules which includes a December 31, 1998 deadline for the implementation of number portability. Petitioner requests waiver of the requirement that a carrier be capable of querying the appropriate number portability database systems in order to deliver calls from their networks to ported numbers anywhere in the country by December 31, 1998, and that its obligation for compliance be deferred until such time in the future that its switching equipment is replaced and it has the capability to comply with the rule. As demonstrated herein, good cause exists for this waiver<sup>1/</sup> because it is

<sup>1/</sup> "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its

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economically and technically infeasible for Petitioner to comply with the December 31, 1998 implementation deadline for number portability.

### **Background and Facts**

1. On June 27, 1996, the Commission adopted its *First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Telephone Number Portability* CC Docket No. 95-116, FCC 96-286 released July 2, 1996 ("Report & Order"), which set a December 31, 1998 deadline for all carriers to be able to query the appropriate databases in order to be able to deliver calls to ported numbers. Petitioner has made efforts to assess what steps it needed to take to meet the December 31, 1998 deadline. Petitioner determined that due to the unique circumstances of its service areas and the limitations of its equipment that compliance with Section 52.31(b) is impossible without Petitioner incurring prohibitively uneconomical costs.

2. Petitioner is a Cellular Radiotelephone Service carrier in rural Alaska. Bristol Bay provides cellular service in numerous geographically remote areas of Alaska RSA 2 - Bethel, serving customers in fishing villages and other small communities in the western part of the state. In each service area cost considerations are primary, therefore Petitioner does not routinely upgrade switch hardware or reprogram operating systems software. Bristol Bay's cellular service is

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1(...continued)

application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative. Northeast Cellular Telephone Co., L.P. v. FCC 897 F.2d 1164, 1166 (D.C. Cir. 1990).

provided by means of Novatel equipment which is no longer supported by its manufacturer. The cellular service areas are not contiguous to one another, and there is no central switch to allow the service areas to function as part of a regional network. Bristol Bay provides cellular service by means of the following eight separate stand-alone systems: King Salmon (Naknek), Dutch Harbor, Kodiak, Sand Point, Togiak, St. George, St. Paul and Big Mountain. Each system serves a small population concentration in a remote area. Large distances separate the systems. For example, the Dutch Harbor system is about 500 air miles from the King Salmon (Naknek) system.

3. In addition, Bristol Bay has no links to any other telecommunications service provider which has the software and/or capability to lease access to the number portability databases to Petitioner. The distances between Petitioner's cellular service areas preclude the use of fiber, microwave or other circuits to connect to any switch which can query the necessary databases. For example, the use of satellite circuits as a means of connection is prohibitively expensive, since it would cost Petitioner thousands of dollars a month to lease circuits for each stand-alone cellular system. If obligated by the rule to incur expenses for switch replacement and data circuits, Petitioner would have no choice but to terminate services and shut the systems down.<sup>2/</sup>

#### **Request for Waiver**

4. Petitioner requests a waiver of Section 52.31(b) which requires the first phase of

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<sup>2/</sup> Petitioner has determined that it would cost in the range of \$450,000 to \$500,000 for replacement of each of its eight cellular switches in order to have the capability to provide number portability services. There is no money available to Petitioner to replace its switches because there is no business plan which Petitioner can develop to show how Petitioner would recover the cost of new switches.

number portability to be implemented by December 31, 1998. The unique circumstances surrounding the offering of service in rural Alaska villages warrant special consideration by the Commission.<sup>3/</sup> Compliance with the imminent deadline which requires Petitioner to be capable of querying the appropriate databases in order to be able to deliver calls to ported numbers is technically infeasible and economically prohibitive for Petitioner and would not be in the best interests of its customers.<sup>4/</sup>

5. Grant of Petitioner's request for waiver is in the public interest because the unique and unusual circumstances surrounding Petitioner's inability to comply with the implementation deadline is due to circumstances beyond its control. Furthermore such circumstances only exist in service areas with the unique attributes of Petitioner's service areas.

6. The size and terrain of a state such as Alaska warrant special attention by the Commission when new rules threaten the ongoing viability of service. Petitioner initiated cellular service in 1990 (beginning in the King Salmon/Naknek area), attempting to offer the best service possible to the rural portions of Alaska which would not otherwise receive cellular service. In this case, the public interest would not be served by requiring a carrier to comply with a new and burdensome requirement which is detrimental to the interests of the carrier and to its customers.

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<sup>3/</sup> The Commission previously has recognized the unique problems faced by cellular service providers in rural Alaska, and has waived its rules accordingly. See Order In Re Alaska RSA No. 1 General Partnership and Bristol Bay Cellular Partnership Petition for Waiver and Special Relief, DA 97-2211 (October 15, 1997).

<sup>4/</sup> Bristol Bay serves about 2,000 customers through eight separate, stand-alone cellular systems in Alaska RSA 2.

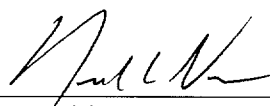
The FCC has stated numerous times that it seeks to be a proponent of the spread of telecommunications services to rural areas.<sup>5/</sup> In this case, Bristol Bay requests the opportunity to continue service to its rural area customers by means of a waiver of Section 52.31(b) the FCC's rules.

### **Conclusion**

For the reasons explained, Petitioner requests a waiver of the Commission's number portability requirements and, in particular, the December 31, 1998 deadline for capability to query databases. The public interest benefit in this case equals or exceeds that which the Commission has found in other instances to be sufficient for waiver. Accordingly, Petitioner requests that a waiver and extension be granted as proposed.

Respectfully submitted,

**BRISTOL BAY CELLULAR PARTNERSHIP**

By:   
David L. Nace  
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October 23, 1998

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<sup>5/</sup> Report and Order In the Matter of Federal-State Joint Board on Universal Service 12 FCC Rcd 8776, 8799-8806 (May 7, 1997).

**DECLARATION**

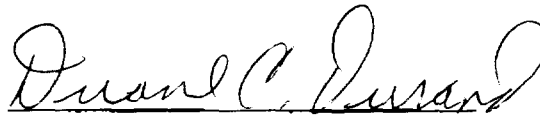
I, Duane C. Durand, hereby state and declare:

1. I am General Manager of the General Partner of Bristol Bay Cellular Partnership, Cellular Radiotelephone Service provider in Alaska RSA 2 - Bethel.

2. I am familiar with the facts contained in the foregoing Petition For Waiver, and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

I declare under penalty of perjury that the foregoing is true and correct.


Executed on this 20th day of October, 1998.



Duane C. Durand, General Manager of General Partner of  
Bristol Bay Cellular Partnership

## CERTIFICATE OF SERVICE

I, Loren Costantino, an employee of Lukas, Nace, Gutierrez & Sachs, Chartered, hereby certify that on this 23rd day of October, 1998, that I have caused a copy of the attached "Petition for Waiver" to be hand-delivered to the persons listed below:

  
Loren Costantino

Lawrence Strickling, Acting Chief  
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